

In her request to the Commission, the petitioner asserts that, prior to taking the 29 hours of sick time, she asked the appointing authority to confirm if she had the appropriate amount of sick time available. The petitioner states that the appointing authority confirmed that she had the appropriate amount of sick leave available as indicated in the E-Cats system, and based on that confirmation, she used the 29 hours of sick leave. The petitioner contends that she should not be required to repay the overpayment amount, as the appointing authority made an administrative error at the time it informed her that she had the appropriate amount of sick leave entitlements available. Moreover, the petitioner explains that she would experience a financial hardship if she is required to repay the overpayment amount, as she is only a part-time employee and she is responsible for paying several bills. In this regard, the petitioner contends that she works part-time and earns less than \$2,000 a month, and her expenses including groceries, car payments, car insurance, and cell phone bills total \$2,300 a month.

In support, the appointing authority provides letters in support of the petitioner's request to waive the overpayment amount. Specifically, the appointing authority asserts that the overpayment amount should be waived as it made an administrative error by initially informing the petitioner that she had sufficient sick leave entitlements to cover 29 hours in sick leave, and it later informed her that she did not have such leave entitlements after she had used the time. In this regard, the appointing authority explains that on May 2, 2018, the Paid Sick Leave law was enacted, which impacted TES employees like the petitioner. Specifically, the law requires employers to provide earned sick leave benefits to TES employees, and each employee earns one hour of sick time for every 30 hours worked. The appointing authority states that, at the time the law was passed, the E-Cats system was not updated to reflect the code changes, as State agencies were not notified until October 26, 2018 to record leave time used by TES employees. It adds that, in December 2018, the Commission notified State agencies to create temporary codes to use in the interim until permanent codes were established. As such, the appointing authority created the code "TESSICK/TESLV" for TES employees to record sick leave in E-Cats.

Additionally, the appointing authority confirms that in August 2019, the petitioner inquired about her leave balance, and assured her that her E-Cats leave balance reflected 22 available hours. Further, the appointing authority contends that a review of the petitioner's leave entitlements was conducted in September 2019, and it appeared that her leave balance as reflected in E-Cats was not correct. In this regard, the appointing authority explains that the E-Cats system was not deducting sick leave used, and as such, the leave balances were not updated in E-Cats. The appointing authority adds that it subsequently contacted OIT regarding such discrepancies, and the appointing authority was notified that new E-Cats codes had been established on August 2, 2019. However, the appointing authority asserts that it was unaware that new codes were implemented until OIT made them aware of the

change. As such, the appointing authority confirms that the petitioner was not aware of her sick leave balance or the issue pertaining to the codes at the time she submitted the relevant leave requests, and as such, the errors were not the result of her actions. Moreover, the appointing authority confirms that the petitioner would experience an economic hardship if the overpayment amount is not waived. The appointing authority states that, if the Commission orders a repayment plan for the overpayment, it would be over the course of 29 pay periods, and \$30 would be deducted for each pay period. The appointing authority also adds that the petitioner would not be authorized to earn sick leave while she is in repayment status, which would create an additional hardship as she would be unable to take time off to care for her children.

In support, the appointing authority submits copies of the petitioner's monthly bills, including: car payments; car insurance; and cell phone bills, which total a combined \$1,435. It also submits a copy of the petitioner's February 21, 2020 paystub, which shows that her earnings per pay period do not cover her expenses.

CONCLUSION

N.J.A.C. 4A:3-4.21 Salary overpayments: State service, provides as follows:

(a) The [Commission] may waive, in whole or in part, the repayment of an erroneous salary overpayment, or may adjust the repayment schedule based on consideration of the following factors:

1. The circumstances and amount of the overpayment were such that an employee could reasonably have been unaware of the error;
2. The overpayment resulted from a specific administrative error, and was not due to mere delay in processing a change in pay status;
3. The terms of the repayment schedule would result in economic hardship to the employee.

It is well settled that all of the factors outlined in *N.J.A.C.* 4A:3-4.21 must be satisfied to successfully obtain a waiver of the repayment obligation. Thus, in *In the Matter of Thomas Micai v. Commissioner of Department of Personnel, State of New Jersey*, Docket No. A-5053-91T5 (App. Div., July 15, 1993), the Superior Court of New Jersey, Appellate Division, affirmed the Commissioner of Personnel's decision to deny a request for waiver of repayment of salary overpayment, finding that, although the appellant had established that the overpayment was the result of an administrative error, he failed to show that enforcement of the repayment would create economic hardship.

In the instant matter, the appointing authority supports the petitioner's request to waive 29 hours of overpayment of sick leave entitlements, for a total of \$870. The petitioner states that the overpayment amount occurred as the result of an administrative error and she would experience a financial hardship if required to repay the overpayment, which the appointing authority confirms in this matter. The Commission agrees. The record reflects that the petitioner inquired about her leave time in good faith, and she used such time based on the appointing authority's initial confirmation that she had sufficient sick time to use. However, the appointing authority subsequently informed her that her leave use of 29 hours of sick time and leave balances were incorrectly recorded as a result of an administrative error. The appellant did not know that she did not possess sufficient leave time at the time she took the 29 hours of leave. As a result of the error, the petitioner was placed in overpayment status, which was not the result of her actions. Based on the circumstances of this matter, the Commission finds that the \$870 in overpayment should be waived. Clearly an administrative error occurred as confirmed by the appointing authority, and the evidence in the record shows that the petitioner would be placed in an economic hardship if required to repay the overpayment amount. Therefore, the petitioner is not responsible for repayment of the 29 hours of sick leave. *See, e.g., In the Matter of D.R., Department of Law and Public Safety* (CSC, decided November 19, 2019); *In the Matter of Fay Catando* (Commissioner of Personnel, decided April 5, 2006); and *In the Matter of Daniel Watson* (Commissioner of Personnel, decided February 14, 2002). Finally, it is noted that this decision is based on the particular facts and circumstances presented and shall not be used as a precedent in any other matter.

ORDER

Therefore, it is ordered that this request for waiver of the repayment of the overpayment of sick leave entitlements be granted.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 2ND DAY OF SEPTEMBER 2020

Deirdre' L. Webster Cobb

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